

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 14-15(1)(DSD/HB)

United States of America,

Plaintiff,

v.

ORDER

James Herman Pegues,

Defendant.

LeeAnn K. Bell, United States Attorney's Office, 300 South 4th Street, Minneapolis, MN 55415, counsel for plaintiff.

James Herman Pegues, #17800-041, Federal Correctional Institute, P.O. Box 5000, Pekin, IL 61555-5000, defendant pro se.

This matter is before the court upon the pro se motion by defendant James Herman Pegues to recall and stay the court's order denying his motion to vacate his sentence under 28 U.S.C. §2255. See ECF No. 39. Pegues argues that the court should recall its order and stay proceedings until the Sixth Circuit Court of Appeals issues a final order in United States v. Stitt, 637 F. App'x 927 (6th Cir. 2016), vacated, 646 F. App'x 454 (6th Cir. 2016).

The issue before the Sixth Circuit is whether Tennessee's modern aggravated burglary statute, Tenn. Code Ann. § 39-14-403 (1990), is a crime of violence under the Armed Criminal Career Act (ACCA). Pegues' first and second-degree Tennessee burglary convictions, however, were under the substantively different pre-1989 Tennessee burglary statutes. Compare Tenn. Code Ann. §§ 39-3-

401, 39-3-403(a) (1982) (repealed 1989), with Tenn. Code Ann. §§ 39-14-403, 39-14-402 (1990). Therefore, the Sixth Circuit's decision in Stitt will have no impact on how Pegues' burglary convictions are classified.

Accordingly, **IT IS HEREBY ORDERED** that defendant's motion to recall and stay order [ECF No. 41] is denied.

Dated: December 12, 2016

s/David S. Doty
David S. Doty, Judge
United States District Court